

EXHIBIT 17  
DATE 1/24/07  
HB 341

## SECTION BY SECTION ANALYSIS OF HB 341

Prepared by: Shirley E. Faust, Chair, HB540 Task Force  
January 22, 2007

For Distribution to House Judiciary Committee by Marty Phippen, Lobbyist for Montana  
Association of Clerks of District Court

HOUSE BILL NO. 341

INTRODUCED BY D. GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE PREPARATION OF JUROR LISTS; AMENDING SECTIONS 3-15-402, 3-15-403, 3-15-404, 46-17-202, AND 61-5-127, MCA; REPEALING SECTION 3-15-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 3-15-402, MCA, is amended to read:

**"3-15-402. (Temporary) Selection of qualified persons.** ~~(1) Subject to subsection (2), at the meeting specified in 3-15-401, the officers present~~ The secretary of state shall select from the most recent list of all registered electors, ~~as prepared by the county registrar,~~ and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. Each name appearing on the list must be assigned a number that must be placed opposite the name on the jury list and must be considered the number of the juror opposite whose name it appears. A person's name may not appear on a jury list for more than one court during a 1-year term.

~~(2) The list prepared under subsection (1) may not include the name of a person permanently excluded from jury service under 3-15-313.~~

*This statute has been amended to provide for the Secretary of State to distribute the list of registered voters to the Clerk of District Court. With the implementation of the statewide voter registration system, Montana Votes, in 2006, the County Clerk & Recorder no longer has the ability to provide a list of registered voters to the Clerk of District Court. Therefore, the Clerk & Recorder and Board of County Commissioners should be removed from the process. This change in statute accurately reflects what we already do in practice.*

*Subsection (2) has been deleted and added under Section 3 below.*

**3-15-402. (Effective October 1, 2007) Selection of qualified persons.** ~~(1) Subject to subsection (2), at the meeting specified in 3-15-401, the officers present, working with the office of the~~ The secretary of state, shall select from the most recent list of all registered electors, ~~as prepared by the county registrar, working with the office of the secretary of state,~~ and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. ~~The officers, working with the office of the secretary of state,~~ shall then combine the resulting list with the list submitted to the clerk of the district court secretary of state under 61-5-127, ensuring that a person's name does not appear on the combined list more than once. Each name appearing on the combined list must be assigned a number that must be placed opposite the name on the combined list and must be considered the number of the juror opposite whose name it appears. A person's name may not appear on a combined list for more than one court during a 1-year term.

~~(2) The combined list prepared under subsection (1) may not include the name of a person permanently excluded from jury service under 3-15-313."~~

***This statute has been amended to provide for the Secretary of State to provide the list of registered voters to the Clerk of District Court. With the implementation of the statewide voter registration system, Montana Votes, in 2006, the County Clerk & Recorder no longer has the ability to provide a list of registered voters to the Clerk of District Court. Therefore, the Clerk & Recorder and Board of County Commissioners should be removed from the process.***

***Subsection (2) has been deleted and added under Section 3.***

**Section 2.** Section 3-15-403, MCA, is amended to read:

**"3-15-403. (Temporary) Lists delivered to clerk Jury lists -- filing -- public inspection.** ~~(1) A list of the names of the persons selected, showing the place of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 15 days after the meeting, the list must be delivered by those officers to the clerk of the district court and filed by the clerk in the clerk's office. (1) On or before the first Monday in May, the list prepared under 3-15-402 must be delivered by the secretary of state to the clerk of the district court and filed by the clerk of the district court in the clerk of the district court's office no later than 5 business days after the receipt of the list.~~

~~(2) A copy of the latest jury list lists filed under subsection (1) and compiled under 3-15-404 and 46-17-202 and a description of the approved computerized random selection process, if one is used, must be~~

kept in the office of the clerk of the district court, and An excerpt, listing the name, address, and birth year of all jurors, must be made available for public inspection during normal business hours.

~~(3) If the clerk of court is satisfied that a person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person must be omitted from the jury list. The reason for the omission must be entered in the minutes of the court.~~

***This statute has been retitled to be the same as the new section established under HB 540 in the 2003 legislative session.***

***It provides for the Secretary of State to deliver the list of registered electors to the Clerk of District Court on or before the first Monday in May. This allows for the jury selection process to begin a month earlier so that jury terms can potentially run concurrent with the county's fiscal year. Currently, the process begins with the delivery of the list by the Clerk and Recorder to the Clerk of District Court on the second Monday in June. It is virtually impossible to print, stuff, mail and process enough jury questionnaires to begin the jury term July 1. Again, with the implementation of the statewide voter registration system, Montana Votes, the County Clerk & Recorder no longer has the ability to provide a list of registered voters to the Clerk of District Court. Therefore, the Clerk & Recorder and Board of County Commissioners should be removed from the process. This change in statute accurately reflects what we already do in practice.***

***To provide clarity and protect a juror's personal information, the broad term "proper particulars" has been removed under subsection (1) and replaced with "an excerpt of only names, addresses and birth year of jurors" under subsection (2).***

***Subsection (3) has been removed from this section and added under Section 3.***

**3-15-403. (Effective October 1, 2007) Jury lists -- filing -- public inspection.** (1) ~~The~~ On or before the first Monday in May, the combined list prepared under 3-15-402 must be delivered by the office of the secretary of state to the clerk of the district court and filed by the clerk of the district court in the clerk of the district court's office no later than 5 business days after the receipt of the combined list.

(2) A copy of the latest jury lists filed under subsection (1) and compiled under 3-15-404 and 46-17-202 and a description of the approved computerized random selection process, if one is used, must be kept in the office of the clerk of the district court, and An excerpt, listing the name, address, and birth year of all jurors, must be made available for public inspection during normal business hours."

***This statute has been amended to provide for the Secretary of State to deliver the combined list to the Clerk of District Court on or before the first Monday in May. This allows for the jury***

*selection process to begin a month earlier so that jury terms can potentially run concurrent with the county's fiscal year. Currently, the process begins with the delivery of the list by the Clerk and Recorder to the Clerk of District Court on the second Monday in June. It is virtually impossible to print, stuff, mail and process enough jury questionnaires to begin the jury term July 1.*

*To protect a juror's personal information "an excerpt listing the name, address and birth year of all jurors" has been added to subsection (2).*

**Section 3.** Section 3-15-404, MCA, is amended to read:

**"3-15-404. (Temporary) Duty of jury commissioner -- jury box or computer database.** (1) The clerk of court is the jury commissioner and may appoint a deputy pursuant to 7-4-2401.

(2) A county jury commissioner may by order establish the use of either a jury box, as provided in subsection (3), or a computer database, as provided in subsection (4), as the means for selecting jurors in the county.

(3) If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror must be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips must be placed in a box of ample size to permit them to be thoroughly mixed. The box must be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used that is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number on the slip. The box may contain only one slip for each number corresponding to the number before the name of each juror on the jury list filed under 3-15-403.

(4) If a county uses a computer database for selection of jurors, the jury commissioner shall cause the list of jurors prepared filed under the provisions of 3-15-402 3-15-403 to be entered into a computerized database.

(5) A person's name may not appear on a jury list for more than one court during a 1-year term.

(6) The clerk of court shall prepare a list of persons to serve as trial jurors for the ensuing year for the district court or each division of the district court. On or before the second Monday of June, the clerk of court shall prepare the jury list pursuant to 46-17-202.

(7) If the clerk of court is satisfied that a person whose name is drawn is deceased, is mentally incompetent, has permanently moved from the county, or has been permanently excused under the provisions of 3-15-313, the person's name must be omitted from the jury list. The reason for the omission must be recorded.

***This section has been amended to add subsections (5), (6) and (7), making it the same as the new section established under HB 540 in the 2003 legislative session. With the implementation of Montana Votes, the list of registered voters will be provided to the Clerk of Court by the Secretary of State. The Clerk of Court is now charged with preparing the list of persons to serve as trial jurors for the ensuing year. Additionally, this change in statute accurately reflects what the Clerks of District Court already do in practice.***

**3-15-404. (Effective October 1, 2007) Duty of jury commissioner -- jury box or computer database.** (1) The clerk of court is the jury commissioner and may appoint a deputy pursuant to 7-4-2401.

(2) A county jury commissioner may by order establish the use of either a jury box, as provided in subsection (3), or a computer database, as provided in subsection (4), as the means for selecting jurors in the county.

(3) If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror must be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips must be placed in a box of ample size to permit them to be thoroughly mixed. The box must be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used that is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number on the slip. The box may contain only one slip for each number corresponding to the number before the name of each juror on the jury list filed under 3-15-403.

(4) If a county uses a computer database for selection of jurors, the jury commissioner shall cause the list of jurors filed under 3-15-403 to be entered into a computerized database.

(5) A person's name may not appear on a jury list for more than one court during a 1-year term.

(6) The clerk of court shall prepare a jury list of persons to serve as ial jurors for the ensuing year for the district court or each division of the district court. On or before the second Monday of June, the clerk of court shall prepare the jury list pursuant to 46-17-202.

(7) If the clerk of court is satisfied that a person whose name is drawn is deceased, is mentally incompetent, or has permanently moved from the county, or has been permanently excused under the provisions of 3-15-313, the person's name must be omitted from the jury list. The reason for the omission must be entered in the minutes of the court recorded."

***This section has been amended to add better language to subsection (6) regarding the list of trial jurors. It also gives the statutory authority for the Clerks of District Court to prepare the list of jurors for the courts of limited jurisdiction. The statutes will accurately reflect what the Clerks of District Court are already doing in practice.***

***Subsection (7) has been amended to incorporate the language that has been deleted under Section 1, 3-15-402 (2). The names of persons who have previously been permanently excused from jury service must be excluded before preparing the list of trial jurors for the ensuing year. The Montana Votes system does not have this functionality. The current jury program used by the Clerks of District Court, and supported by the Office of the Court Administrator, has the functionality to meet this requirement.***

**Section 4.** Section 46-17-202, MCA, is amended to read:

**"46-17-202. (Temporary) Formation of trial jury for justices', municipal, and city courts. (1)** At the time of preparing the district court jury list under 3-15-404(6), ~~the county commissioners and clerk and recorder~~ clerk of the district court shall prepare a jury list for each justice's, municipal, and city court within the county. Each list must consist of residents of the appropriate county, city, or town. The lists must be selected in any reasonable manner that ensures fairness, and each list must include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists must be filed in the office of the clerk of the district court as provided in 3-15-403. The appropriate list must be posted in a public place in each county, city, or town, and the list must comprise the trial jury list for the ensuing year for the county, city, or town.

(2) Trial jurors must be summoned from the jury list by notifying each one orally that the person is summoned and of the time and place at which attendance is required.

***This section has been amended to provide for the Clerk of District Court to prepare the jury lists for the courts of limited jurisdiction. With the implementation of the statewide voter registration system, Montana Votes, in 2006, the County Clerk & Recorder no longer has the***

***ability to provide the lists for the courts of limited jurisdiction. This change accurately reflects what many of the Clerks of District Court are already doing in practice.***

**46-17-202. (Effective October 1, 2007) Formation of trial jury for justices', municipal, and city courts.** (1) At the time of preparing the district court jury list under 3-15-404(6), the clerk of the district court shall prepare a jury list for each justice's, municipal, and city court within the county. Each list must consist of residents of the appropriate county, city, or town. The lists must be selected in any reasonable manner that ensures fairness, and each list must include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists must be kept on file filed in the office of the clerk of the district court as provided in 3-15-403. The appropriate list must be posted in a public place in each county, city, or town, and the list must comprise the trial jury list for the ensuing year for the county, city, or town.

(2) Trial jurors must be summoned from the jury list by notifying each one orally that the person is summoned and of the time and place at which attendance is required."

***This section has been amended to reflect minor changes in language.***

**Section 5.** Section 61-5-127, MCA, is amended to read:

**"61-5-127. (Effective October 1, 2007) Providing lists of licensed drivers and holders of Montana identification cards to clerks of district court -- jury selection purposes.** (1) On the second Monday of ~~May~~ April of each year, the department shall submit to the clerk of the district court of each county ~~secretary of state~~ a list, prepared from the department's databases of licensed drivers and holders of Montana identification cards, showing the name, address, and date of birth of all licensed drivers and holders of Montana identification cards, authorized by 61-12-501, who are 18 years of age or older and whose address is in that county. The list must be compiled on a county-by-county basis and be further divided by the city of residence of the persons named on the list to enable the drawing of lists for city courts that are composed of only those residents living within a city's jurisdiction. The list must be provided for the exclusive purpose of making a list of persons to serve as trial jurors for the ensuing year.

(2) The list submitted by the department under subsection (1) must be certified by the attorney general or the attorney general's designee.

(3) The department may not provide the social security or driver's license numbers of persons on the list for any purpose."

***This section has been amended to reflect an earlier delivery date of the list of licensed drivers and Montana identification card holders. The list will be delivered in April instead of May.***

***It also provides for the Department of Justice to deliver the list of licensed drivers and Montana identification card holders to the Secretary of State rather than the Clerk of District Court. Under the Help America Vote Act (HAVA), the Department of Justice is already providing driver license data to the Secretary of State to verify social security numbers and physical addresses of registered voters. A subset of this data will be used and combined with the registered voter data to produce the combined list under Section 1.***

**NEW SECTION. Section 6. Repealer.** Section 3-15-401, MCA, is repealed.

***This section repeals 3-15-401. With the implementation of the statewide voter registration system, Montana Votes, in 2006, the County Clerk & Recorder no longer has the ability to provide a list of registered voters to the Clerk of District Court. Therefore, the Clerk & Recorder and Board of County Commissioners should be removed from the process.***

**NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

***This bill is effective upon passage and approval. The jury selection process begins in May 2007 and the process needs to follow statute. But in order for that to happen, the amendments surrounding the new statewide voter registration system, Montana Votes, must be in place.***

**- END -**